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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,814	08/19/2003	Ryan E. Johnson	28459.00	4680

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EXAMINER
SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
3644	

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/643,814	JOHNSON, RYAN E.	
	Examiner	Art Unit	
	Kimberly S Smith	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 May 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 May 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

2. In response to applicant's argument that the Kemper reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the instant invention is directed to a flap being connected to a housing structure. As such, one would look to any known housing structure to find a solution for attachment of a flap thereto, thereby satisfying the requirement that the prior art reference must be reasonably pertinent to the particular problem with which the applicant was concerned (i.e. a means for attaching a flap to a housing structure). As Kemper is directed to a housing structure having a flap attached thereto, while not within the same field of endeavor, one would reasonably look to Kemper as being within an analogous art as that of Cannaday.

3. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kemper states at column 4, lines 25-33 that the snaps provide for a removable means to assist in the removal of debris and therefore the obviousness rationale used in the rejection is properly based in common knowledge and the statement is not conclusory as argued.

4. In response to applicant's argument that the use of snaps improves the safety of a pet passing through the door, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

5. It is noted that reference is made in the arguements to US Patent 2,758,646 directed to Johnson. The Johnson reference was not used as a basis of rejection and any teachings or conclusions regarding the flap have no basis on the rejection of record and the remarks by the Applicant regarding thereto have not been found persuasive. It is also noted that the Johnson reference is not discussed within the Cannaday reference, nor has it been listed in the references cited.

Drawings

6. The drawings were received on 05/25/04. These drawings are approved.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cannaday, US Patent 4,989,546 in view of Kemper et al., US Patent 5,216,850 (Kemper).

Cannaday discloses a pet door comprising a frame/means for framing (52) defining a passageway, a solid flap/means for obstructing/first flap/flap (54) having a first and second face, an open flap/means for sealing/second flap/strip (56) wherein the open flap is moved by the solid flap in one direction and restricted when a force is applied in the opposing direction (column 4, lines 3-15). However, Cannaday does not disclose the use of snap fasteners for fastening the open flap. Kemper teaches within the analogous are of housing structures the use of attaching a flap (28) via snaps/means for releasing to a housing structure for easily attaching and detaching the flap from the housing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use snaps as taught by Kemper to attach the flap mechanism as disclosed by Cannaday in order to provide for quick attachment and detachment of the flap thereby allowing for ease in assembly and subsequent cleaning of the flap.

Regarding claims 2-5 and 16-18, while Cannaday does not disclose the material properties of the flaps regarding flexibility and rigidity, it would have been obvious to one having ordinary skill in the art at the time the invention was made (as stated in the instant application at [0013]) to use either a rigid or flexible flap since the applicant has not disclosed that the rigidity or lack thereof solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any rigidity of material.

Regarding claims 6 and 19, Cannaday as modified discloses the open flap is substantially U-shaped (best represented at Figure 2).

Regarding claims 7 and 20, Cannaday as modified discloses the claimed invention except for the open flap being substantially O-shaped. It would have been obvious matter of design choice to use an O-shaped flap, since the applicant has not disclosed that the shape of the open flap solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any shape.

Regarding claim 8, Cannaday as modified discloses the solid and open flap cooperating to produce a weather-resisting feature (column 4, lines 15-16).

Regarding claims 10, 11, 23 and 24, Cannaday as modified discloses that the magnets enhance the sealing performance of the door *and* to ensure that the flaps will be maintained in their closed position. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a third and fourth magnetic coupling, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Regarding claims 12 and 22, Cannaday as modified discloses the snap fasteners being calibrated to release from the passageway at a particular release force, as it is inherent in the structure of snap fasteners to do so.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss

MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER